

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	.	
	.	
Plaintiff,	.	CR No. 23-0257 (TSC)
	.	
v.	.	
	.	
DONALD J. TRUMP	.	Washington, D.C.
	.	Monday, August 28, 2023
Defendant.	.	10:00 a.m.
.	

TRANSCRIPT OF STATUS HEARING
BEFORE THE HONORABLE TANYA S. CHUTKAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	THOMAS WINDOM, ESQ. MOLLY G. GASTON, ESQ. U.S. Attorney's Office 601 D Street NW Washington, DC 20530
For Defendant:	JOHN F. LAURO, ESQ. GREGORY M. SINGER, ESQ. Lauro & Singer 400 North Tampa Street 15th Floor Tampa, FL 33602
	TODD BLANCHE, ESQ. Blanche Law 99 Wall Street New York, NY 10005
Court Reporter:	BRYAN A. WAYNE, RPR, CRR U.S. Courthouse, Room 4704-A 333 Constitution Avenue NW Washington, DC 20001

Proceedings reported by stenotype shorthand.
Transcript produced by computer-aided transcription.

P R O C E E D I N G S

THE DEPUTY CLERK: Good morning, Your Honor. This is Criminal Case No. 23-257, United States of America versus Donald J. Trump. Counsel, please approach the lectern and state your appearances for the record.

MS. GASTON: Good morning, Your Honor. Molly Gaston for the United States along with Thomas Windom, and with us at counsel table is Special Agent Jamie Garman.

THE COURT: Good morning.

MR. LAURO: Good morning, Your Honor. John Lauro on behalf of President Trump. With me is my partner, Greg Singer, and Todd Blanche, who has noticed an appearance as well, as co-counsel for President Trump.

THE COURT: And is Filzah Pavalon here? Is that person appearing or they're not appearing in this case?

MR. LAURO: She's with my firm but not here presently.

THE COURT: All right. So pro hac entered. Good morning, everyone.

We are here for a hearing regarding the parties' proposed trial dates. But before we discuss the proposed schedules, I want to address the defense's motion to exclude time under the Speedy Trial Act, which is ECF No. 18.

The defense has moved to exclude the 25 days between Mr. Trump's initial appearance on August 3, 2023, and today's status conference from the Speedy Trial Act calculation. The

1 government has opposed that motion but acknowledged in their
2 filing that the exclusion of time between the August 3rd
3 initial appearance and August 28th scheduled hearing already
4 will occur under the operation of other provisions of the act
5 such as those provisions that automatically exclude time
6 delays resulting from the filing of motions.

7 As the Supreme Court noted in *Bloate v. United States*, 559
8 U.S. 196 at 203, the Speedy Trial Act requires that a criminal
9 defendant's trial commence within 70 days of a defendant's
10 initial appearance or indictment, but excludes from the 70-day
11 period days lost to certain types of delay. Section
12 3161(h) (7) of the Speedy Trial Act permits the Court to
13 exclude time from the calculation based on findings that the
14 ends of justice served by taking such action outweigh the best
15 interests of the public and the defendant in a speedy trial.

16 Taking into account the reasonable time necessary for
17 effective preparation, the numerous motions filed between
18 defendant's arraignment and this hearing, as well as the fact
19 that the motion has been filed by the defense, I do find that
20 the ends of justice outweigh the defendant and the public's
21 interest in a speedy trial, and therefore I will grant the
22 motion. Accordingly, the 25 days between Mr. Trump's initial
23 appearance on August 3, 2023, and today's status conference
24 will be excluded.

25 Now let's move on to the proposed schedule. In my August

1 3, 2023, minute order I asked the government to submit a
2 proposed trial date with an estimate of the time that would
3 be needed to set forth the prosecution's case-in-chief during
4 trial. I also asked the defense to respond with their
5 proposed trial date and estimate to the extent possible of
6 the time that they believe they would need to put on a defense
7 case.

8 So the government in its proposed pretrial schedule, which
9 is ECF No. 23, proposes that trial begin on January 2, 2024,
10 and estimates that its case-in-chief will take no longer than
11 four to six weeks, and actually the government also proposed
12 that voir dire jury selection begin before that date.

13 The defense in their proposed trial schedule, which is ECF
14 No. 30, proposes that trial begin in April 2026, and states
15 that it cannot yet estimate how long the defense will take but
16 for now adopts, and I quote, the same calculation as the
17 government, four to six weeks.

18 These proposals are obviously very far apart. And for
19 reasons I will discuss shortly, neither of them is acceptable.
20 So with regard to the Speedy Trial Act, the right to a speedy
21 trial is guaranteed by the Sixth Amendment and the Speedy
22 Trial Act comprehensively regulates the time within which a
23 criminal trial must begin. And that's from *Zedner v.*
24 *United States*, 547 U.S. 489 at 500.

25 The act, which is codified at 18 U.S.C. § 3161(a), provides

1 that the appropriate judicial officer at the earliest
2 practicable time shall, after consultation with the counsel
3 for the defendant and the attorney for the government, set the
4 case for trial on a day certain so as to assure a speedy
5 trial.

6 The earliest practicable time depends in part on factors
7 which can exclude time from the act's calculation; that is, to
8 stop the speedy trial clock. These factors include whether
9 the case is so unusual or so complex due to the number of
10 defendants, the nature of the prosecution, or the existence of
11 novel questions of fact or law, that it is unreasonable to
12 expect adequate preparation for pretrial proceedings or for
13 the trial itself before the trial date. That's from section
14 (h) (7) (B) (ii).

15 Another factor is whether the trial date would deny the
16 defendant reasonable time to obtain counsel, would
17 unreasonably deny the defendant or the government continuity
18 of counsel, or would deny counsel for the defendant or the
19 attorney for the government the reasonable time necessary for
20 effective preparation, taking into account the exercise of due
21 diligence. And that's from (h) (7) (B) (iv).

22 Now, I want to note here that setting a trial date does
23 not depend and should not depend on a defendant's personal and
24 professional obligations. Mr. Trump, like any defendant, will
25 have to make the trial date work regardless of his schedule.

1 If this case, for example, involved a professional athlete, it
2 would be inappropriate for me to schedule a trial date to
3 accommodate her schedule. The same is true here.

4 Moreover, although the Speedy Trial Act primarily
5 safeguards the defendant's rights, as the Supreme Court noted
6 in *Barker v. Wingo*, 407 U.S. 514 at 519, there is a societal
7 interest in providing a speedy trial which exists separate
8 from and at times in opposition to the interests of the
9 accused. The Supreme Court in *Zedner* observed that if the act
10 were designed solely to protect a defendant's right to a
11 speedy trial, it would make sense to allow a defendant to
12 waive the application of the act. But the act was designed
13 with the public interest firmly in mind.

14 Among other things, the public has an interest in the fair
15 and timely administration of justice, as well as reducing
16 defendant's opportunity -- reducing a defendant's opportunity
17 to commit crimes while on pretrial release, and preventing
18 extended pretrial delay from impairing the deterrent effort --
19 deterrent effect of punishment. And I'm quoting from *Zedner*
20 at 501.

21 The Supreme Court's decision in *Barker* further highlights
22 that delay may prejudice the prosecution and public interest.
23 It noted: Delay is not an uncommon defense tactic. As the
24 time between the commission of the crime and the trial
25 lengthens, witnesses may become unavailable or their memories

1 may fade. If the witnesses support the prosecution, its case
2 will be weakened, sometimes seriously so, and it is the
3 prosecution which carries the burden of proof in this case, as
4 in every case. And that's from *Barker* at 521.

5 Relatedly, the Sixth Amendment also guarantees a defendant's
6 right to effective assistance of counsel, which in turn depends
7 on counsel having adequate time to prepare for trial. But as
8 the D.C. Circuit noted in *United States v. Burton*, 584 F.2d
9 485 at 489, note 10, counsel is not entitled to unlimited
10 preparation time. Instead, counsel is entitled to reasonable
11 preparation time.

12 And in *United States v. Cronin*, 466 U.S. 648 at 663, the
13 Supreme Court held that neither the period of time that the
14 government spent investigating the case nor the number of
15 documents that its agents reviewed during that investigation
16 is necessarily relevant to the question of whether a competent
17 lawyer could prepare to defend the case.

18 I am aware that Mr. Trump faces charges in other state and
19 federal criminal cases. Given that Federal Rule of Criminal
20 Procedure 43 requires his presence at trial unless waived, the
21 Court has considered the currently set trial schedules in
22 those cases, as well as the competing demands of his counsel
23 in this and other cases. Although I believe Mr. Lauro, who is
24 lead counsel in this case, does not represent the defendant in
25 any of the other matters -- is that right, Mr. Lauro?

1 MR. LAURO: That's correct, Your Honor, although my
2 co-counsel, Mr. Blanche, does represent President Trump in the
3 New York proceeding as well as in the Florida proceeding, and
4 we will be trying this case together. Given the magnitude of
5 the documents, over 250 witnesses, the complexity of the
6 issues, it really is a team effort. So both of us are co-lead
7 counsel in this matter.

8 THE COURT: All right. Thank you.

9 All right. I'm going to have some questions for each side,
10 but I'm going to start by addressing the defense argument
11 regarding the timing of other cases. So the defense contends
12 that the median time from commencement to termination for a
13 jury demandable case involving 18 U.S.C. § 371, which is
14 conspiracy to defraud the United States, is 29.4 months, and
15 that the court regularly allows far more time than the
16 government proposes in other January 6 cases.

17 As an initial matter, and as the government correctly
18 points out, that 29.4 months cited by the defense was the
19 time from commencement to sentencing, not to trial. And
20 sentencing, in this court at any rate, in the last few years
21 usually takes place about 90 days or more from verdict. So
22 that statistic is a bit misleading. And one of the cases that
23 the defense cites, *United States v. Foy*, 21-CR-108, is my
24 case.

25 In that case, there have been multiple continuances due to

1 the COVID-19 pandemic, litigation over -- considerable
2 litigation over pretrial detention, a superseding indictment,
3 and plea negotiations. So, given that all the other cases the
4 defense cites were brought in 2021, I expect and suspect that
5 the pandemic had an impact on the time it took to resolve
6 those as well.

7 In addition, as the government notes, the other January 6
8 cases cited by the defense all involve between six and 17
9 codefendants. There are no codefendants in this case. And
10 from my review, the defense has not identified any case in
11 this district where the defendant was given over two years
12 between indictment and trial in which there were no
13 codefendants and no ongoing pandemic.

14 And the government hasn't identified any cases in this
15 district where the length of time between indictment and trial
16 was roughly five months, although they did point to the
17 *Manafort* case in the Eastern District of Virginia, which went
18 to trial roughly five months after the superseding indictment.

19 The other factor I wanted to focus on is the preparation
20 that's needed for trial. And I think I will have some
21 questions in that area. The defense advocates for a trial
22 schedule equal to the government's time spent investigating.
23 But as I've already noted, the Supreme Court found in *Cronic*
24 that there is no necessary correlation between the period of
25 time that the government spent investigating the case and the

1 defendant's task in preparing to deny or rebut a criminal
2 charge.

3 *Cronic* was a mail fraud case in which the government took
4 over four and a half years to investigate and included
5 extensive document review. The Court found that the time
6 devoted by the government to the assembly, organization, and
7 summarization of the thousands of written records
8 unquestionably simplified the work of the defense counsel in
9 identifying and understanding the basic character of the
10 defendant's scheme. That's at 664 of *Cronic*.

11 The defense here argues that they need years to review
12 the over 11.5 million pages of discovery, declaring they would
13 need to review nearly a hundred thousand pages per day to
14 finish the government's initial production by its proposed
15 date for jury selection. The government responds that
16 characterization of the discovery review burden is misleading.
17 It contends that 65 percent of its initial production consists
18 of materials to which the defendant has functionally had
19 access, are duplicative, or do not constitute Rule 16
20 discovery. 25 percent come from entities associated with
21 Mr. Trump. And hundreds of thousands of pages come from the
22 National Archives and House Select Committee to investigate
23 the January 6 attack.

24 The government further states that it has made a small
25 second discovery production consisting of 615,000 pages or

1 files, 20 percent of which were generated by records from an
2 entity associated with Mr. Trump. The government also
3 represents that in the first production it provided defense
4 counsel with a set of key documents that it views as some of
5 the most pertinent to its case-in-chief. Now, I realize the
6 defense may have a different view of that, but nonetheless
7 it's been provided.

8 So who will be arguing at this point? Will it be you,
9 Ms. Gaston?

10 MS. GASTON: Yes, Your Honor.

11 THE COURT: So regarding the discovery that's been
12 turned over to the defense so far, you said in your motion
13 that about 65 percent of the first production is either
14 duplicative, is material that Mr. Trump has already had access
15 to, or is not Rule 16 discovery.

16 How much of the discovery did Mr. Trump already have access
17 to such as documents from the archives that his counsel would
18 have reviewed for privilege?

19 MS. GASTON: Yes, Your Honor. And let me begin by
20 saying that at this point discovery is now substantially
21 complete.

22 THE COURT: Okay.

23 MS. GASTON: We made a fifth production last night.

24 THE COURT: Oh, a fifth.

25 MS. GASTON: A fifth.

1 THE COURT: Okay. So I had two in the last -- so
2 there's been three more. Okay.

3 MS. GASTON: Correct, Your Honor. So at this point
4 the discovery is at approximately 12.8 million pages. That
5 is generally the number of pages that we are at. But as we
6 described in our reply, number of pages is not the best metric
7 for measuring such things.

8 So of those 12.8 million pages, approximately 25 percent,
9 or more than 3 million, are pages associated with the
10 defendant's campaign or political action committees. More
11 than 3 million, as we stated in our reply, came from the
12 United States Secret Service. That's approximately 24
13 percent. There are hundreds of thousands of pages from
14 publicly available litigation, 172,000 pages from the National
15 Archives. And so --

16 THE COURT: And those are documents that were -- would
17 have been reviewed for privilege by Mr. Trump's counsel before
18 they were turned over.

19 MS. GASTON: Yes, Your Honor. So approximately 61
20 percent of what we have provided so far, or 7.8 million pages,
21 are pages that came from entities associated with the
22 defendant, either in political action committees or the
23 campaign, from the National Archives, from publicly available
24 litigation documents, open-source materials like tweets,
25 materials from the House Select Committee, the vast majority

1 of which were already publicly available, and then some data
2 associated with a consultant to the defendant in some of the
3 election litigation.

4 So what is in the other 5 million pages, which is what
5 we're really talking about, is things like every grand jury
6 transcript in this case up to indictment and the accompanying
7 exhibits. The defendant has all of those already.

8 THE COURT: And those exhibits -- excuse me. If an
9 exhibit was produced but shown to a witness during the grand
10 jury testimony, then it's been duplicated. Is that correct?

11 MS. GASTON: Yes, Your Honor.

12 THE COURT: It's listed twice.

13 MS. GASTON: Exactly. So for instance, if a witness
14 in this case received a grand jury subpoena and produced
15 documents to the government, and the government went through
16 the documents, and then that person testified in the grand
17 jury and the government used documents from the document
18 production, those documents would be reproduced to the
19 defendant both in terms of the grand jury production and as --
20 the subpoena production, and the testimony and the documents
21 shown to the witness in the grand jury.

22 The same thing is true of all of our witness interviews in
23 the course of the investigation.

24 THE COURT: That's what I was going to ask you next.
25 How much of the discovery could be categorized as witness

1 statements and notes?

2 MS. GASTON: One moment, Your Honor.

3 Your Honor, approximately 58,000 pages are from witness
4 interview folders. That includes the transcripts of those
5 interviews. Most of them were audio recorded. So the defense
6 has been provided audio recordings as well as transcripts
7 created for convenience of review. And then all of the
8 exhibits that were used in the course of those interviews, and
9 those were provided in an organized fashion.

10 So, basically, there's a folder or a Bates range associated
11 with each witness. It includes the transcript of either the
12 grand jury testimony or of the interview, the agent notes if
13 it was an interview, and then the exhibits associated or any
14 interview report of the interview.

15 THE COURT: Do you have an idea of how much of the
16 discovery is material that Mr. Trump actually created, such as
17 tweets or other...

18 MS. GASTON: The open-source material, Your Honor,
19 would include things like the publicly available litigation.
20 So I'm not sure I have a breakdown exactly of his tweets, but
21 I could get that for you.

22 THE COURT: All right. That's fine.

23 Now, you also said, at least in your response, that more
24 than 3 million pages, or 25 percent of the first production,
25 and 20 percent of the second production, came from, in quotes,

1 entities associated with Mr. Trump. And you mentioned a PAC,
2 a political action committee. Are there other -- what do you
3 mean by that?

4 MS. GASTON: There's the defendant's campaign,
5 Your Honor, and then a few different political action
6 committees.

7 THE COURT: Okay.

8 MS. GASTON: And let me correct myself, Your Honor. In
9 terms of the open-source material that includes campaign
10 statements, tweets, Truth Social posts, that's about 27,000
11 pages.

12 THE COURT: Okay. Now, in your key documents list, do
13 you have an approximation of how many documents are included
14 in that list?

15 MS. GASTON: Yes, Your Honor. One moment, please.

16 The key documents are approximately 47,000 pages. And let
17 me take a moment just to describe what the key documents are.

18 THE COURT: Yes.

19 MS. GASTON: So it includes all of our case agent's
20 summary testimony as well as any exhibits introduced through
21 her to the grand jury. And so that includes things like
22 transcripts of witness testimony or testimony before the House
23 Select Committee. It also includes a file that is essentially
24 an annotation of the indictment. It is almost 3 00 different
25 documents that are labeled and named according to the

1 paragraph of the indictment that they support. So it is
2 essentially a road map to our case, Your Honor. And it
3 includes other key documents that the government believes that
4 it may use at trial as well.

5 The other thing that we did through case agent testimony,
6 and have pointed the defense to in our cover letter and
7 through that case agent testimony, is we identified material
8 that we believe is arguably favorable to the defendant. Of
9 course, that is simply the government's guess at what the
10 defense might find favorable, and it is of course a duty for
11 the defense to also identify potentially exculpatory material
12 in materials --

13 THE COURT: But your *Brady* obligations are
14 constitutional and ongoing and that's what -- that's the
15 material you're talking about.

16 MS. GASTON: Yes, Your Honor.

17 THE COURT: And as you know, I think we take a --
18 if there's a doubt, the government's encouraged to take an
19 overinclusive position on that.

20 MS. GASTON: Yes, Your Honor. And, in addition,
21 the defense has spoken in interviews and such about various
22 defenses that they may raise in this case. And all of the
23 materials that we have provided, the grand jury subpoena
24 returns, the search warrant returns, it is all searchable in
25 their electronic database for purposes of identifying that

1 material as well.

2 THE COURT: Okay. Thank you for answering a couple
3 of my questions, including how the information is organized.
4 And so -- and it's substantially complete.

5 All right. And that key documents list, was that just for
6 the first production or has that been supplemented for the
7 entire production?

8 MS. GASTON: The key documents list was an entirely
9 duplicative collection of material in the very first
10 production so that we could say to the defense in our very
11 first production, here's what we view as the most important
12 evidence in this case. Here it is, it's all in one place for
13 you in a very organized fashion.

14 THE COURT: Okay. Thank you.

15 Well -- thanks.

16 MS. GASTON: Thank you, Your Honor.

17 THE COURT: I'll note that many years ago when I was
18 trying murder and conspiracy cases across the street in
19 Superior Court, we got witness names on the day of trial and
20 witness statements and grand jury testimony before the witness
21 testified and sometimes after the witness testified. And
22 while the discovery rules here in federal court provide for
23 far more disclosure in advance, the manner in which the
24 discovery in this case has been organized indicates that the
25 government has made a considerable effort to expedite review,

1 certainly beyond their normal discovery obligations.

2 In cases involving large amounts of document discovery,
3 initial review is usually done by electronic searches. The
4 government represents that it has produced the discovery in
5 load ready files so that the defense can review them quickly,
6 in the same manner as the government did, through targeted
7 keyword searches and electronic sorting.

8 So, Mr. Lauro, why won't that significantly speed up the
9 review process?

10 MR. LAURO: Because Mr. Trump, President Trump, is
11 entitled to a fair trial.

12 THE COURT: Absolutely.

13 MR. LAURO: He is entitled to an opportunity to have a
14 defense lawyer who is reasonably prepared. This is a request
15 for a show trial, not a speedy trial.

16 Your Honor, I respectfully and strongly disagree with the
17 prosecution's presentation here. The concept that we would
18 have access to materials in the archives, in Secret Service,
19 in other government agencies, that that would somehow enable
20 us to prepare for trial because we should have already been
21 reading that material for the last two and a half years, is
22 absurd and ridiculous.

23 We have to do our job as defense lawyers to represent a
24 client. This is a solemn obligation of every defense lawyer,
25 no matter if you're representing someone who's in a street buy

1 on a corner or a former president of the United States.

2 I have a special obligation to make sure that my client is
3 adequately represented. And I'm sorry, Your Honor, to
4 suggest -- for a federal prosecutor to suggest that we could
5 go to trial in four months is not only absurd but it's a
6 violation of the oath to do justice. And let me just go
7 through this organized material --

8 THE COURT: Okay. Let's take the temperature down for
9 a moment here.

10 MR. LAURO: I take my obligation seriously as a defense
11 lawyer. I've been doing this for 40 years. I know Your Honor
12 has done it as well. It's a sacred obligation to represent a
13 defendant. And it's not easy when you have the entire
14 government amassed against you. But we need adequate time to
15 prepare. President Trump stands before Your Honor as an
16 innocent man right now. He's entitled to his Sixth Amendment
17 protection. He's entitled not only to counsel, but under
18 *Gideon*, the promise of *Gideon*, he's entitled to counsel that
19 can prepare adequately.

20 What this case means, we're talking about 9 terabytes of
21 information. I have to go through that information. I have
22 to sort it by witnesses, over 250 witnesses. I have to
23 organize it in a way that's reasonable. I have to look at all
24 the information in terms of these key witnesses. I have to
25 cross-reference against other witnesses that may have said

1 something about a particular witness. I need to think about
2 impeachment material. I need to think about corroborative
3 material. I need to think about my own Rule 17 subpoenas as
4 well.

5 For the government to suggest that I can do that in four
6 months is an outrage to justice, that not once have they
7 talked about justice in this case, not once. So this is what
8 I have to do.

9 Now, they can give me key documents. That's very nice of
10 them. That's very kind of them. I'd like to know one defense
11 lawyer in the United States that's going to rely on a
12 government's proposal of key documents.

13 THE COURT: Mr. Lauro, as I said, let's take the
14 temperature down. I understand you have a sacred obligation.
15 I understand Mr. Trump is presumed innocent, as is every
16 defendant. But let's not overlook the fact that Mr. Trump has
17 considerable resources that every defendant -- criminal
18 defendant does not usually have.

19 And what I want -- my question to you is, given how the
20 discovery in this case has been produced, in an electronic
21 searchable form, and given the fact that a substantial portion
22 of the discovery has already been reviewed by Mr. Trump's
23 counsel as part of documents produced by archives -- hold
24 on -- why won't that speed it up?

25 I mean, we're not talking -- discovery in 2023 is not

1 sitting in a warehouse with boxes of paper looking at every
2 page at the first cut. You and I both know that that is not
3 how the first cut of discovery in a complex case is reviewed;
4 it's reviewed by electronic searches. So why won't the manner
5 in which this discovery has been turned over speed up your
6 review process?

7 MR. LAURO: For a number of reasons. First of all,
8 we've not had access as criminal defense counsel to what's in
9 the archives, what's in the Secret Service, what's in DOJ,
10 what's in political action committees. We have not had that
11 access. We as criminal defense lawyers now, for the first
12 time looking at these charges, have to assess these charges in
13 terms of what the actual relevance is.

14 They have given us what they represent is Rule 16 material
15 that's relevant to the defense. We are now the defense and
16 we're looking at all the material they've given us.

17 THE COURT: All right. But some of that material is
18 not new to you --

19 MR. LAURO: It is new to me, Your Honor.

20 THE COURT: Whether or not you're looking at it through
21 the eyes of a criminal defense lawyer, certainly it was
22 reviewed by Mr. Trump's counsel before, before this case came
23 in.

24 MR. LAURO: Who were not criminal defense lawyers. How
25 is that new to me, Your Honor? I just have to work through --

1 THE COURT: In other words, this is not brand-new
2 information. Some of it are statements, some of it are
3 materials of your client's own creation. In other words, none
4 of this -- you're not seeing this for the -- you personally
5 may be, this may be new to you, but this is material that has
6 been reviewed, at least for privilege -- some of this material
7 are statements of your client and materials created by your
8 client or entities associated with him. Why -- that's not
9 brand-new information, is it?

10 MR. LAURO: Of course it is. Of course. To a criminal
11 defense lawyer, it's brand-new information. That's like
12 saying if a CEO of a public company was before Your Honor and
13 had responsibility for running a company, oh, they've seen all
14 the information that the company has, why do they need time to
15 prepare? They've already had it for years.

16 THE COURT: No, that's a different point. Because it's
17 information from the company doesn't mean that the defendant
18 had seen it. But a lot of this material is material your
19 client created or material that your client's lawyers, maybe
20 not you specifically, saw and reviewed and had possession of
21 before this case.

22 MR. LAURO: Your Honor, the statements of my client are
23 minuscule compared to the avalanche of information here.
24 Minuscule. And by the way, I need to look at all the
25 statements, Mr. Blanche needs to look at all the statements

1 as a criminal defense lawyer, not from a client's perspective.
2 That's the teaching of *Gideon*. It would be a miscarriage of
3 justice if a lawyer were expected to absorb all the
4 information that a client already knew and not look at it anew
5 and not look at it from the perspective of a criminal defense?

6 THE COURT: Absolutely. And certainly you have to look
7 at your client's statements, you have to look at -- there's a
8 lot that you may personally have to eyeball. But you don't
9 need to look at -- you personally, at least at the first cut,
10 are not going to review all 12 million pages, right? Some of
11 those documents are going to be reviewed electronically. Am I
12 correct?

13 MR. LAURO: No documents get reviewed electronically.
14 They get assembled electronically, and we can do searches for
15 documents, but, Your Honor, all I can tell you is I've worked
16 these large cases. Maybe -- I don't know what the prosecution
17 has done in a former life, but these cases are enormously
18 complex and they go something like this. As you know,
19 Your Honor, I'm not telling you anything; you've been through
20 it. You have to do searches, maybe with key terms.

21 THE COURT: Right.

22 MR. LAURO: You have to organize those documents
23 typically by witnesses and issues. You have to cross-
24 reference them with respect to what other people say and
25 what other people have mentioned. Then you have to organize

1 a narrative. I like to do witness outlines. Some lawyers are
2 different. I like to be prepared for trial. I have an
3 obligation to a client.

4 Then, in addition, you have to look for evidence that
5 corroborates witnesses that are favorable to you. You have
6 to look for impeachment evidence with respect to witnesses
7 that say something bad about you.

8 In this case we have not only documents we're searching
9 for, we have videos and recordings that can't be searched
10 electronically.

11 THE COURT: But you have --

12 MR. LAURO: This is a massive undertaking.

13 THE COURT: But you have the transcripts of those
14 recordings.

15 MR. LAURO: I don't think in all respects we do, and
16 not certainly with respect to every single video I don't think
17 we do. This is over 12 million pages, 9 terabytes of
18 information. This is an overwhelming task. Never in the
19 history of the United States have we seen a case of this
20 magnitude go to trial in four months, let alone a year, let
21 alone less than two years.

22 If we were big corporations in America, where the only
23 thing was money at stake, no one would blink an eye at a
24 two-and-a-half or three-year trial schedule. But this man's
25 liberty and life is at stake and he deserves an adequate

1 representation, as every American does. He's no different
2 than any American.

3 THE COURT: Mr. Lauro.

4 MR. LAURO: I'm sorry, Your Honor. For a defense
5 lawyer to hear these arguments from a prosecutor who took an
6 oath to do justice, I'm sorry, it has to be spoken. Every
7 single person in this courtroom, every single person in the
8 United States deserves a fair and adequate defense.

9 And I'm telling you, as an experienced trial lawyer, an
10 experienced defense lawyer, we cannot do this in the time
11 frame that the government has outlined, and we cannot do this
12 in the time frame that would be suggested by anything less
13 than what we have. We need this time to prepare.

14 THE COURT: I understand, Mr. Lauro, but I can tell
15 you, you are not going to get two more years. This case is
16 not going to trial in 2026. It's not going to trial in --

17 MR. LAURO: Your Honor, I can only give you my best
18 estimate based on the fact that, you know, we're looking at
19 this discovery right now. We just got a discovery at three
20 o'clock in the morning today.

21 THE COURT: I understand. But Mr. Lauro, for one
22 thing -- okay. You suggest that the defense needs a
23 substantial amount of time to investigate, for example.
24 The existence of the grand jury investigating in this case has
25 been known for -- since September 2022, almost a year, has been

1 public knowledge. The identity of many of the witnesses who
2 have testified in the grand jury, and potential trial witnesses,
3 have been a matter of public record. And given that Mr. Trump
4 likely knows most of the witnesses the government -- or many of
5 the witnesses the government would call, several of whom,
6 according to at least page 7 of the indictment, may be staff and
7 associates. So why would the defense need two years to
8 investigate?

9 MR. LAURO: Because there's no obligation for any
10 American citizen to start conducting their own defense during
11 a grand jury investigation and prepare for a trial when we
12 don't even know what the issues are, what the charges are.

13 THE COURT: There may not be an obligation, but
14 certainly a defense attorney, a good defense attorney, knowing
15 that their client was under investigation by a grand jury,
16 knowing who the witnesses -- some of the witnesses were in the
17 grand jury, would already start. Right? Isn't that what a
18 good defense attorney would do?

19 MR. LAURO: Your Honor, I was not hired during that
20 period of time. The government never communicated, as far as
21 I know, to President Trump's counsel regarding the theories of
22 investigation, the matters under investigation, the statutes
23 at issue, the witnesses. None of that was ever provided.
24 They could have done that. They could have said, yes, here's
25 what we're doing --

1 THE COURT: I'm not sure if they could commensurate
2 with --

3 MR. LAURO: -- the fact that they didn't puts us at a
4 disadvantage because how can we go into a dark room and figure
5 out what they are investigating? That would be absurd. We
6 can't be charged and hindered because we didn't do an
7 investigation during the grand jury period when they wouldn't
8 tell us what that investigation was about.

9 I mean, this case, Your Honor, looking at it from a defense
10 lawyer's perspective, is an enormous, an enormous factual
11 issue. We haven't even talked about the novel issues of law
12 we're going --

13 THE COURT: I'm coming to those.

14 MR. LAURO: -- to have to address. And I know you're
15 going to get to that. But this is an enormous, overwhelming
16 task. We have two law firms, two small law firms here working
17 around the clock, and you see how diligent we are in
18 responding to Your Honor. Whenever anything is asked, we
19 respond right away. Even if the rules are shortened for
20 President Trump, we're making sure we're responding
21 immediately, we're doing everything that a diligent defense
22 lawyer can do.

23 But Mr. Trump is entitled, entitled to a defense that's
24 reasonably prepared. It would be a miscarriage of justice if
25 that truth is not sustained in this court, and every single

1 court. Whether it's Mr. Trump or anyone else deserves that
2 kind of defense.

3 THE COURT: And they're going to get it. The point I'm
4 asking you is about the review necessary for this case. And
5 Mr. Lauro, I'm well acquainted with *Gideon*. I'm well
6 acquainted with the defendant's Sixth Amendment rights, his
7 right to a fair trial, and I intend to ensure he gets it. But
8 I'm not going to give -- as I said, this trial is not -- this
9 case isn't going to trial in 2026.

10 And I want to know, despite the rhetoric in your response
11 to the government's proposed trial date, realistically, why
12 you think that you need this time when, although there are 12
13 million pages of discovery, you and I both know and the
14 government knows that that's not -- again, nobody's sitting
15 there going through page by page. A significant amount of
16 this discovery is duplicative. A significant amount of it you
17 already have in your possession or know about. And whether or
18 not you, the defense lawyer, are seeing it for the first time,
19 Mr. Trump has been ably represented by experienced counsel
20 during the whole pendency of this investigation.

21 This is not -- you know, it's not an unveiling -- a
22 surprise he's been indicted. You've known this was coming.
23 Mr. Trump's counsel has known this was coming for some time.
24 And I'm sure any able, diligent, zealous defense counsel would
25 not have been sitting on their hands waiting for an

1 indictment. Certainly -- yes, an indictment signifies the
2 beginning of a case, and you're looking at the indictment and
3 you're looking at what you need to prepare. But a lot of this
4 material was in the hands of Mr. Trump and his counsel for a
5 significant period of time before the grand jury was convened.
6 And that's what I'm asking you about.

7 You can keep talking about 12 million pages and his right
8 to a fair trial. He has a right to a fair trial, but what is
9 a fair amount of time to prepare? And the 12 million pages we
10 talk about here are not truly indicative of how much time he
11 needs to prepare because a lot of that is simply a belt and
12 suspenders approach by the government, for example, in
13 releasing duplicative documents, exhibits that were referred
14 to in witness testimony and grand jury testimony that are also
15 disclosed to you in production.

16 So a lot of this is duplicative, a lot of this may not even
17 be relevant, and I realize there has to be some searches to
18 categorize that, but that does not, in this court's estimation,
19 need to take two years.

20 All right. Let me ask you this --

21 MR. LAURO: Your Honor, may I respond to that?

22 THE COURT: Yes.

23 MR. LAURO: And respectfully, what I'm saying is not
24 rhetoric, it's in defense of the Constitution and my client
25 and with respect to trying to explain to Your Honor what's

1 necessary to defend somebody under these circumstances.

2 I doubt, I doubt that -- you can't push a button these days
3 and get documents sorted. You have to go through those
4 documents. No person who is charged with a crime should be in
5 some way disadvantaged because they didn't do or anticipated
6 what that crime would be in connection with a grand jury
7 proceeding, and they didn't do or whether or not they did do
8 any kind of research or examination or defense prior to the
9 charge.

10 We start at the time of the charge. It would be highly
11 prejudicial if Your Honor took into account any time before
12 the charge was entered and suggest that the defense had some
13 obligation to conduct investigation prior to the time the
14 charges were brought.

15 THE COURT: I'm not suggesting you had an obligation.
16 I'm simply suggesting you had an opportunity.

17 MR. LAURO: I didn't. I was hired, you know, a month
18 and a half ago, Your Honor, and I'm going to be trial counsel
19 along with Mr. Blanche. Not only do we have to review this
20 material, we have to absorb it. You know what it's like as a
21 trial lawyer. Sure, you know, a firm can help, paralegals can
22 help, they can read documents, they can look at documents.
23 But at the end of the day, Your Honor, we stand before the
24 jury and we have to make our case before a jury. We have to
25 know the facts. Mr. Blanche and I have to absorb a gargantuan

1 amount of facts in this case in order to adequately represent
2 a client.

3 Cross-examining a witness is not an easy task. You have to
4 make sure that you understand all the documents that might be
5 related. This is a question of whether or not -- and I'm
6 pleading with Your Honor as an experienced defense lawyer,
7 having done this over 40 years -- this is a question of
8 whether or not one man, one United States citizen, gets a fair
9 trial or not. And I am telling you, Your Honor, based on what
10 I've seen so far, it is a gargantuan task.

11 I understand we have modern search tools. Years ago maybe
12 there would be 50 boxes, right, in a room, and we'd look
13 through the boxes one by one. Now there's 12 million pages.
14 Sure, we sort them in some way by computerized searches, but
15 at the end of the day I have to read the grand jury
16 transcripts, I have to read the FBI 302s, I have to go through
17 all of the text messages.

18 THE COURT: That's a much smaller universe of
19 documents, Mr. Lauro.

20 MR. LAURO: I don't think so, Your Honor.

21 THE COURT: You and I both know that.

22 MR. LAURO: 250 witnesses in this case, and counting,
23 that might be witnesses in this case so far is the estimate we
24 have. And that's to say nothing of our opportunity to file
25 and seek Rule 17 subpoenas, to do our own witness interviews,

1 to conduct our own investigation. All of that will be
2 eviscerated. All of that will be eviscerated.

3 And if the goal here is to truly do justice, truly do
4 justice, then every American citizen is entitled to counsel
5 with a reasonable time to prepare. No one, no one, is
6 suggesting that we're not being diligent. No one is
7 suggesting that we're not taking these obligations seriously,
8 because we are, Your Honor. We have an enormous
9 responsibility here, not just to one client but to the system,
10 and to ensure that the system works for every American.

11 Mr. Trump is not above the law but he's not below the law.
12 He should not be treated any differently than any other person
13 who appears before Your Honor and asks and pleads for justice.
14 And I am saying, without question, that we cannot be ready
15 under the circumstances of this case until we have a
16 reasonable amount of time, consistent with justice, so we can
17 prepare and we can also present.

18 Your Honor, candidly, the jury is entitled to an organized
19 defense. The jury is entitled to a presentation that makes
20 sense, a defense narrative that shows that counsel is
21 prepared. The worst thing for a jury to see is a lawyer that
22 gets up there and starts asking questions, they don't even
23 know what they're talking about because they haven't been
24 prepared. And we've been there, we've seen that, and none of
25 us here in this courtroom would do that, and I'm certainly

1 not.

2 THE COURT: Thank you, Mr. Lauro. And I will say that
3 I don't doubt for a minute that you're working diligently, but
4 I will say that you and I have a very, very different estimate
5 of the time that's needed to prepare for this case. But as
6 you have mentioned several times, Mr. Trump will be treated
7 exactly, with no more or less deference, than any other
8 defendant would be treated.

9 All right. With regard to the complexity of the case, the
10 defense says this is a complicated, unusual case that might
11 require the Court to address novel questions of fact or law,
12 but you don't explicitly state what those novel questions are.
13 I mean, some of the January 6 cases, all of which have been
14 brought in this court, have involved conspiracies related to
15 the Electoral Count Act.

16 Now, a former president being charged for crimes while in
17 office, or the prosecution of a presidential candidate may be
18 points of historic note about this case, but they aren't legal
19 issues. This case involves one defendant and four counts.
20 The charges are not multijurisdictional. The alleged conduct
21 occurred over the period of a few months. Why is this case
22 complex, other than the historic aspect of it?

23 MR. LAURO: We've outlined the factual complexity to
24 some extent. The legal complexity, number one, is we have a
25 very initial issue of executive immunity which we're going to

1 raise with the Court likely this week or early next week,
2 which is a very complex and sophisticated motion regarding
3 whether or not this court would even have jurisdiction over
4 this case in light of the fact that, as the indictment
5 essentially indicts President Trump for being President Trump
6 and faithfully executing the laws and executing on his take
7 care obligations, so we're going to have a very, very unique
8 and extensive motion that deals with executive immunity.

9 We also anticipate a selective prosecution motion, given
10 the fact that this prosecution provides an advantage to these
11 prosecutors' boss, who is running a political campaign against
12 President Trump, which everybody knows about, and this
13 selective prosecution motion will go directly to the core of
14 criticisms that Mr. Trump made historically against President
15 Biden and his son and whether or not this is a retaliatory
16 action as a result of that. So we expect that there's going
17 to be a selective prosecution motion as well.

18 We also have core First Amendment issues that are going to
19 be litigated in this case. We also have a number of Rule 17
20 subpoenas that we anticipate serving. There might be some
21 litigation about that.

22 So there's going to be an enormity of unique legal issues.
23 None of these have been decided yet. To say nothing of the
24 core question of whether or not 18 U.S.C. 371 should be used
25 in a political context. That's going to be a novel issue

1 because historically it's not been used against a political
2 opponent. This is the first time where the Biden
3 administration has used that statute against a political
4 opponent. We're going to be dealing with whether or not the
5 obstruction statute should be applied under the circumstances
6 of this case.

7 So all of those are novel issues, Your Honor, and I will
8 say that this court -- I know Your Honor is going to look at
9 all those issues seriously, but they're going to be briefed
10 completely and fully by the defense. And not only are we
11 going to be dealing with a host of very significant factual
12 issues, but I'm afraid, Your Honor, we're going to be back
13 many, many times arguing some of these complex motions. And
14 I --

15 THE COURT: Can't wait.

16 MR. LAURO: I see you smiling, Your Honor, that you're
17 looking to enjoy these novel issues, but they've never been
18 decided. And certainly the question of executive immunity is
19 a very important one. It's not been decided in the criminal
20 context by the Supreme Court. It has with respect to civil
21 litigation, but everything in the indictment, it's a speaking
22 indictment, 45 pages of essentially a prosecutorial theory.

23 All of that really embraces executive action or items
24 within the penumbra of executive action, within the outer
25 perimeter, as the legal definition is, of what President Trump

1 was required to do as president. That's going to present an
2 incredibly important *ab initio* legal issue for Your Honor to
3 decide.

4 So we're going to be busy with very, very complex, novel
5 issues without question in this case. This is one of the most
6 unique cases from a legal perspective ever brought in the
7 history of the United States. Ever. And we're going to have
8 to deal with those issues. And we will.

9 But we're already starting that at the same time that we
10 have this massive factual investigation under way. So it's a
11 dual issue. And that's why I'm so adamant about the time to
12 prepare. It's not just looking through 18 million pages of
13 documents, it's also looking through legal theories and legal
14 issues that will be presented, and some of these have never
15 touched a court before, and Your Honor's time and effort are
16 going to have to be devoted to that as well.

17 So all of this presents a clear reason to handle this as if
18 President Trump were any other person coming before Your Honor
19 and needing the time necessary to prepare adequately both on
20 the legal side and on the factual side.

21 THE COURT: All right.

22 Ms. Gaston. Could you respond to Mr. Lauro's discussion
23 of the time needed to review the documents in this case.

24 MS. GASTON: Yes, Your Honor. I think there is a
25 reason why Mr. Lauro resisted answering your specific question

1 about what the exact time would be needed to review the
2 materials in this case, and it's because he doesn't want to
3 admit that through electronic searches and through the
4 reasonable due diligence used in modern criminal trials, it
5 is possible to be ready much sooner than April of 2026.

6 Let me first address a few of Mr. Lauro's points that
7 suggest that the defense is starting fresh at indictment.
8 So, first, in advance of indictment in this case, the Select
9 Committee made public a large amount of the evidence in this
10 case, and the defendant himself published video and written
11 defenses in response, which demonstrate that the defendant was
12 observing the Select Committee's investigation and work, and
13 defending himself against it.

14 In fact, in an interview the night the indictment was
15 unsealed in this case, Mr. Lauro called the indictment "a
16 regurgitation of the J6 committee report."

17 In terms of pre-indictment litigation, the government and the
18 defendant engaged in extensive pre-indictment litigation
19 regarding executive privilege. It took place in five sealed
20 proceedings starting in August 2022 and lasting through March of
21 2023. And it concerned the scope of grand jury testimony for 14
22 witnesses. And I'll just note that we asked for and received
23 permission from the chief judge to provide that information to
24 you today.

25 In terms of witnesses, a number of people on our potential

1 witness list are not a surprise to the defense either. The
2 defendant's political action committee paid attorneys' fees for
3 more than a dozen witnesses during the course of our
4 investigation. And since indictment, Mr. Lauro has a team of
5 experienced attorneys working for him. There are four counsel
6 of record, two additional attorneys who attended the
7 arraignment, one of whom was intimately involved in the
8 pre-indictment litigation that I just mentioned, another at the
9 last hearing.

10 And when Mr. Lauro appeared on multiple news programs and
11 podcasts following the indictment, he described a number of the
12 defenses he plans to raise, motions he plans to file, and he
13 stated that he had read Vice President Pence's book twice and
14 was already planning his cross-examination.

15 Just a week or so ago, the defendant claimed publicly to have
16 created a robust report on the stolen presidential election of
17 2020 that contained irrefutable and overwhelming evidence of
18 election fraud that his attorneys would use in service of a
19 motion to dismiss. We are not starting fresh at indictment in
20 this case.

21 Other things that Mr. Lauro mentioned are not a reason not to
22 proceed promptly to trial. With respect to Rule 17 subpoenas,
23 as the Court knows, those are not intended as a discovery tool,
24 and the defense has to meet exacting standards of relevancy,
25 admissibility, and specificity. And the best way to find out if

1 the defense can meet those standards is to set a schedule based
2 off of a trial date and move forward with them.

3 The same goes, Your Honor, with respect to the complexity
4 that Mr. Lauro just mentioned. So, first of all, Mr. Lauro
5 mentioned that they are prepared to file a motion regarding
6 executive immunity this week. Let's have that motion. The
7 government will respond to that motion and the Court can
8 consider it. But let's set a trial date and set a schedule.

9 Other things that Mr. Lauro mentioned are not novel
10 questions. Selective prosecution motions are common in this
11 district. I'm sure that Your Honor receives them all the time.
12 Similarly, Rule 17 subpoenas, there's a lot of case law on
13 those. And First Amendment issues in the context of fraud is
14 not a new legal issue and that won't be complex either. And
15 §371 has been challenged in a number of ways in the course of
16 more than a decade, and that is not a complex legal issue
17 either.

18 But I think the thing that all of this shows is the
19 importance of setting a trial date and working backwards with a
20 schedule. I think all of us, Your Honor, Mr. Lauro, we know
21 that a trial date really sort of focuses the mind and enables
22 everybody to work towards a common date.

23 And so the question before the Court today is, under the
24 Speedy Trial Act, what is the balance of the defendant's right
25 and need to prepare for a fair trial and, on the other hand,

1 the public's exceedingly and unprecedentedly strong interest in
2 a speedy trial here. The defendant, formerly the senior-most
3 official in our federal government, is accused of historic
4 crimes: attempting to overturn the presidential election,
5 disenfranchise millions of Americans, and obstruct the peaceful
6 transfer of power.

7 There is an incredibly strong public interest in a jury's
8 prompt and full consideration of those claims in open court.
9 And there's also a strong public interest in a fair trial, which
10 means that we need to proceed to trial as soon as the defense
11 can be ready, reasonably, because on a near daily basis the
12 defendant posts on social media about this case. He has
13 publicly disparaged witnesses, he has attacked the integrity of
14 the courts and of the citizens of the District of Columbia who
15 make up our jury pool, and this potentially prejudices the jury
16 pool.

17 So under the Speedy Trial Act, Your Honor, we need to find a
18 time for trial when -- as soon as the defense can reasonably be
19 ready. The government's trial date estimate was an estimate of
20 when, based on our knowledge of the discovery, the public nature
21 of the evidence in this case, the pre-indictment litigation,
22 Mr. Lauro's experience and ability to prepare, and the
23 organization of the discovery, that was our estimate. But the
24 government urges the Court to set the soonest possible trial
25 date when the Court believes that the defense can reasonably

1 be ready.

2 THE COURT: Okay. Thank you.

3 So I'm going to digress for a moment and talk about CIPA.
4 The parties agreed to hold a conference today on the
5 Classified Information Procedures Act, CIPA, to discuss the
6 small amount of classified information that may be subject to
7 discovery in this case. Because such procedures might affect
8 the trial date and the parties' readiness, I think it might
9 make sense to discuss CIPA now, or we can wait till the end of
10 the hearing. What's your preference? Mr. Windom?

11 MR. WINDOM: I think now makes sense, Your Honor.

12 THE COURT: Mr. Lauro?

13 MR. LAURO: Yes, Your Honor. Mr. Blanche will take
14 care of that.

15 THE COURT: All right.

16 So, as I understand it, CIPA does not create any additional
17 rights to discovery or disclosure but rather establishes
18 procedures for how and when certain procedures relating to
19 classified information will be handled during the discovery
20 process and the lead-up to trial.

21 The government filed a consent motion in what may be our
22 last joint unopposed filing -- such a nice beginning to the
23 case. The government filed a consent motion to appoint a
24 classified information security officer pursuant to CIPA
25 Section 2, which was ECF No. 33, and an unopposed motion for a

1 protective order regarding classified materials pursuant to
2 CIPA Section 3, which was ECF No. 35. I granted both motions
3 on August 22 and entered a sealed order designating the
4 classified information security officer, and that was ECF Nos.
5 36 and 37.

6 Now, CIPA Section 4 provides that the Court upon a
7 sufficient showing may authorize the United States to delete
8 specified items of classified information from documents to
9 be made available to the defendant through discovery under the
10 Federal Rules of Criminal Procedure, to substitute a summary
11 of the information for such classified documents, or to
12 substitute a statement admitting the relevant facts that
13 classified information would tend to prove.

14 Pursuant to the discovery process under Section 4, there
15 are three steps governing the handling of classified
16 information under Sections 5 and 6 of CIPA.

17 First, under Section 5, the defense must file a pretrial
18 notice precisely identifying the classified information they
19 want to use at trial; second, upon motion of the government,
20 the Court shall hold a hearing pursuant to Section 6(a) to
21 determine the use, relevance, and admissibility of the
22 proposed evidence; and third, following the Section 6(a)
23 hearing and formal findings of admissibility by the Court, the
24 government may move to substitute redacted versions of
25 classified documents for the originals or to prepare an

1 admission of certain relevant facts or summaries for
2 classified information that the Court has ruled admissible.

3 So, Mr. Windom, are you handling this?

4 MR. WINDOM: Yes, Your Honor.

5 THE COURT: The government has noted that it does not
6 anticipate introducing classified documents in its
7 case-in-chief. Is this still the case?

8 MR. WINDOM: Yes, ma'am.

9 THE COURT: I realize this is dependent on the trial
10 date, but does the government have an estimated schedule for
11 producing classified information to the defense and/or moving
12 for deletion or substitution under Section 4?

13 MR. WINDOM: Yes, ma'am.

14 THE COURT: How much material are we talking about
15 here?

16 MR. WINDOM: Sure. So top line, whatever happens with
17 CIPA we don't anticipate will affect any trial date Your Honor
18 sets, whatever the date may be.

19 There are two things to talk about here. First, there
20 is the limited amount of classified information that the
21 government is going to make available to the defense. And
22 second is the CIPA Section 4 process.

23 With respect to the information that is going to be made
24 available to the defense, the universe of what we're talking
25 about is five to ten nonduplicative classified documents

1 totaling less than a hundred pages of material. Those are the
2 documents.

3 There's also a transcript. The transcript will be about
4 125 pages long. It's a transcript of a witness interview. We
5 have already provided the relevant part of the transcript in a
6 nonclassified form. In fairness, we are going to provide the
7 rest of the transcript as well. That is in classification
8 review. That will be provided to the defense as well.

9 So in total, between the documents and the transcript,
10 we're talking about 225, 250 pages total.

11 THE COURT: Okay.

12 MR. WINDOM: This is information that the defense can
13 review as soon as it gets its final security clearance.
14 Mr. Blanche currently has an interim top secret clearance. He
15 is allowed to review only a small part of the material at this
16 point. We anticipate Mr. Blanche may have a better
17 understanding of when he'll get his final security clearance,
18 but we anticipate that will be fairly soon. Within the next
19 few weeks is our best estimate. That's not something we
20 control.

21 As I said at the beginning, we do not anticipate introducing
22 classified information in our case-in-chief. To the extent
23 that the defense reviews the material and wants to give notice
24 under CIPA Section 5 that they intend to use the material,
25 first of all, based on my knowledge and information, I don't

1 think they will do that. If they do do that, we would
2 recommend a date for that CIPA 5 notice, a deadline for the
3 CIPA 5 notice of 30 days after Mr. Blanche gets his final
4 security clearance. That would give him time to review the
5 material.

6 Mr. Lauro, my understanding, he does not have a security
7 clearance at this point, but there are ways -- to the extent
8 that Mr. Blanche needs to discuss the material with Mr. Lauro,
9 the government believes that there are ways to do that either
10 in a unclassified form or in a classified form available to
11 Mr. Lauro should he get an interim security clearance, which
12 is a much faster process than a final security clearance.

13 If the defense does move under Section 5 of CIPA, which
14 again we recommend 30 days after Mr. Blanche gets his final
15 clearance, the government would then be in a position to move
16 very quickly for a CIPA 6 hearing.

17 THE COURT: I was going to ask you, how long do you
18 estimate you'd need for the Section 6(a) hearing?

19 MR. WINDOM: I'll say top line two weeks to make the
20 motion. It's somewhat dependent on which documents, if any,
21 which would then implicate which equity holders would be
22 involved that the defense wants notice. That said, there's a
23 universe in which the government doesn't move for a CIPA 6
24 hearing.

25 THE COURT: You said does not?

1 MR. WINDOM: Correct. There's a universe in which that
2 happens, in which the government does not move for a CIPA 6
3 hearing.

4 THE COURT: Okay.

5 MR. WINDOM: But I think, in fairness, you can set a
6 date two weeks after the CIPA 5 notice deadline for the
7 government to move under CIPA 6.

8 THE COURT: And I assume that after the 6(a) hearing,
9 if there is one, the government will not need much time -- or
10 how much time will the government need to prepare redacted
11 versions? Substitute redacted versions.

12 MR. WINDOM: Sure. Again, with the variable that it's
13 highly dependent on what the document is, we believe that that
14 can be accomplished very quickly, in a matter of weeks, and I
15 think it's fine if you want to put a two-week deadline on that
16 given the nature of the documents.

17 THE COURT: All right.

18 MR. WINDOM: That's with respect -- so that's the first
19 bucket of the information that the defense will be getting in
20 classified discovery. CIPA 4 is separate. The government
21 anticipates filing a motion under CIPA Section 4 which we will
22 request that the Court hear on an ex parte basis. It involves
23 a limited amount of information for the Court to review on a
24 discrete issue. And we anticipate, if Your Honor would like
25 to set a deadline for that, September 25, which is four weeks

1 away, is more than enough time. If you want it to be sooner,
2 that will be --

3 THE COURT: September 25 is fine.

4 MR. WINDOM: Thank you, Your Honor. And thereafter,
5 once we file that, then Your Honor can consider that in
6 whatever due course Your Honor believes appropriate.

7 THE COURT: All right. Mr. Blanche. Good morning.

8 MR. BLANCHE: Good morning, Your Honor.

9 THE COURT: All right. I realize, again, this is
10 dependent on the trial date. But does the defense have an
11 estimated time -- obviously, you don't have your final
12 clearance yet, so it would depend on that -- by which it plans
13 to file its notice identifying the classified information it
14 plans to use?

15 MR. BLANCHE: So, Your Honor, just as far as my
16 security clearance is concerned and also my counsel who is
17 here today, the process is ongoing, and I do not believe that
18 there's a lot of time left in the process, but it's completely
19 out of my control.

20 In the case in the Southern District of Florida, there's
21 a tremendous amount of key events in September and October
22 around the CIPA discovery in that case. So I anticipate
23 spending a fair amount of time between whenever I get a
24 security clearance and into October with the CIPA discovery in
25 that case. My understanding from the government is that the

1 number of documents in this case is small.

2 THE COURT: It's relatively small.

3 MR. BLANCHE: The issue I have is -- about when we will
4 make Section 5 motions, if we make Section 5 motions at all,
5 is I would certainly have to speak about that with my counsel
6 who I don't believe has even interim clearance yet.

7 THE COURT: Well, remember, at least according to
8 Mr. Windom, the government isn't even planning on using any
9 classified documents in its case-in-chief. So this would sort
10 of be dependent on whether you wanted to introduce that
11 information.

12 MR. BLANCHE: And even beyond that, there's other
13 potential litigation -- beyond just whether the government
14 chooses to use anything in their case-in-chief, there's
15 litigation that the defense can initiate under CIPA depending
16 on what the documents show, whether it's requests for
17 additional documents or for the government to do additional
18 searches for additional documents. I don't know. There may
19 not be any of that litigation, but I won't know that until I
20 review the documents.

21 So the only contention or issue I have with the schedule
22 proposed by the government is I think the triggering date for
23 a Section 5 filing should be 30 days after co-counsel gets
24 security clearance, not me.

25 THE COURT: But why does that have anything to do with

1 you? It's an ex parte filing they're proposing giving to me
2 by September 25. Are we talking about the same thing?

3 MR. BLANCHE: No, that's Section 4.

4 THE COURT: Okay.

5 MR. BLANCHE: That's the government, and that's fine.
6 The proposed date by the government for our motions was 30
7 days after --

8 THE COURT: That's based on their proposed trial date,
9 though. Right?

10 MR. BLANCHE: I don't know what it's based on. It's
11 just what they suggested. My request would be that any
12 motions we need to file under CIPA, to the extent it's
13 triggered, it's triggered off of the date that Mr. Lauro and
14 his team receive security clearances. It's not supposed to
15 take that long. For example, I believe I started the process
16 in the Southern District of Florida about 45 days ago, and so
17 it's nearly complete. My understanding, not from anybody
18 sitting at this table --

19 THE COURT: Excuse me. When did you get your interim
20 clearance?

21 MR. BLANCHE: Oh, that's within a day or two. It's
22 very quick. However, Your Honor, my understanding is there's
23 not -- well, I don't want to speak to the documents. But my
24 understanding is that the special counsel's office was able to
25 accelerate the process in the Florida case, and I'm assuming

1 they can do the same here.

2 THE COURT: Oh, I'm sure they will try.

3 MR. BLANCHE: They apparently have the ability. So I
4 would just respectfully request, Your Honor -- I can certainly
5 look at the documents as soon as I have clearance, and I
6 appreciate the government making them available as soon as I
7 do have clearance, but that doesn't help my strategy and
8 whether we need to file Section 5 motions without counsel
9 being able to look at them.

10 So that would be my only adjustment. The other proposed
11 dates for the Section 4 filing, I don't have an objection to
12 that.

13 THE COURT: Okay. Thank you.

14 All right. Mr. Lauro, you've already touched on -- do
15 you want to respond, Mr. Windom?

16 MR. WINDOM: Just briefly, Your Honor.

17 THE COURT: Yes.

18 MR. WINDOM: What I would propose is that the Court
19 keep that deadline for the CIPA 5 notice of 30 days after
20 Mr. Blanche gets his final clearance. Based on what I believe
21 to be able to happen, if Mr. Blanche is able to review that
22 material, he may be able to make determinations on his own
23 with respect to notice, or he may be able to actually speak to
24 Mr. Lauro with an interim clearance regarding the nature of
25 the documents such that they can make a determination soon.

1 What I don't want to happen is for us to key things off of
2 a date which we cannot know as to when Mr. Lauro will get a
3 final clearance. Maybe we're lucky, maybe that's only two
4 months, but then we're talking about three months from now is
5 when a CIPA 5 notice would be filed.

6 THE COURT: I'm inclined to keep the schedule, and if
7 there's a delay in the clearance process, I'll adjust it on
8 motion of the parties.

9 MR. WINDOM: Thank you, Your Honor.

10 THE COURT: Now, motions schedule. Mr. Lauro, you've
11 already talked about some of the motions you might file. And
12 again, I won't hold you to this, but can you give me a sense
13 of what if any dispositive motions or motions requiring
14 significant briefing you intend to file? You've mentioned the
15 executive immunity, you've mentioned selective prosecution.
16 What else are we talking about here?

17 MR. LAURO: Thank you, Your Honor. We'll have motions
18 addressed to each conspiracy that's alleged in the indictment
19 as well.

20 THE COURT: What kind of motions are you talking about?

21 MR. LAURO: Motions to dismiss based on the flawed
22 legal theory, and the fact that in our view this is a
23 political prosecution. And as a result we're going to have to
24 raise that issue squarely with Your Honor and do it justice.
25 So we anticipate those motions to be filed.

1 My understanding is that the selective prosecution motion
2 may involve a request for an evidentiary hearing as well, and
3 I anticipate that the executive immunity argument will also
4 come with a motion to stay as well which we may be entitled to
5 under existing law.

6 So all of those are motions that we anticipate filing as
7 quickly as possible. Needless to say, it's a significant
8 task. We want to make sure we get all the issues before Your
9 Honor in a way that does justice to these important motions.

10 THE COURT: All right. Thank you.

11 Ms. Gaston, I'm assuming there may be in limine motions
12 from both sides, but does the government plan on filing any
13 other motions that will require a significant briefing
14 schedule?

15 MS. GASTON: No, Your Honor. We're thinking in limine
16 motions and then depending on Rule 17 subpoenas and such,
17 responding.

18 THE COURT: All right. I am going to take a very brief
19 recess, a few minutes, five or 10 minutes, and we'll reconvene
20 for the trial date.

21 (Recess from 11:14 a.m. to 11:20 a.m.)

22 THE COURT: All right. I understand all too well
23 the need for counsel to have enough time to investigate and
24 prepare for trial. That need is even more compelling in a
25 case such as this where the defendant faces serious charges

1 carrying significant penalties, and where the government has
2 had ample time and resources to investigate and bring these
3 charges.

4 I take seriously the defense's request that Mr. Trump be
5 treated like any other defendant appearing before this court,
6 and I intend to do so. But I also want to point out that most
7 defendants do not receive this level of assembled, organized
8 and summarized discovery, as well as other concessions made
9 because of the historic nature of the case.

10 Nonetheless, the government's requested date of January 2,
11 2024, does not in my opinion give the defense enough time to
12 get ready for trial. Even with the considerable resources at
13 his disposal, Mr. Trump, who faces trial in several other
14 matters, needs more than five months to prepare.

15 On the other hand, the defense's proposed date of April
16 2026 is far beyond what is necessary. The offense giving rise
17 to this case occurred at the end of 2020 and the beginning of
18 2021. To propose trying this case over five years later risks
19 the real danger that witnesses may become unavailable or their
20 memories may fade. And while Mr. Trump has a right to time to
21 prepare, the public has a right to a prompt and efficient
22 resolution of this matter.

23 The defense cites to *Powell v. State of Alabama*, 287 U.S.
24 45 at 49, for the proposition that while prompt disposition of
25 criminal cases is to be commended and encouraged, a defendant

1 charged with a serious crime must not be stripped of his right
2 to have sufficient time to advise with counsel and prepare his
3 defense.

4 Quoting the case, the defense argues that scheduling a too
5 speedy trial is not to proceed promptly in the calm spirit of
6 regulated justice but to go forward with the haste of the mob.
7 In that landmark decision in *Powell*, which is also known as
8 the Scottsboro Boys case, the Supreme Court reversed the
9 convictions of several young black men for allegedly raping
10 two white women.

11 The court noted that after their arrest the defendants
12 were met at Scottsboro by a large crowd and that the attitude
13 of the community was one of great hostility. That's at 51.
14 The defendants' trials began six days after indictment. The
15 Supreme Court found that there was a clear denial of due
16 process because the trial court failed to give the defendants
17 reasonable time and opportunity to secure counsel and the
18 defendants were incapable of adequately making their own
19 defense. That's at 71.

20 This case, for any number of reasons, is profoundly
21 different from *Powell*. Mr. Trump is represented by a team of
22 zealous, experienced attorneys and has the resources necessary
23 to efficiently review the discovery and investigate, and, as
24 the government points out, a great deal of the discovery
25 provided has already been available to the defense or is

1 duplicative.

2 The grand jury investigating the events in this case was
3 convened in September of 2022, meaning that Mr. Trump has
4 known about the government's investigation for nearly a year.

5 I have seen many cases unduly delayed because a defendant
6 lacks adequate representation or cannot properly review
7 discovery because they are detained. That is not the case
8 here.

9 Consequently, after considering the parties' briefs and
10 arguments, I find that a trial beginning on March 4, 2024,
11 would give the defense adequate time to prepare for trial
12 and ensure the public's interest in seeing this case resolved
13 in a timely manner.

14 I realize that Mr. Trump's criminal case in New York is
15 scheduled for trial on March 25. I did speak briefly with
16 Judge Merchan to let him know that I was considering a date
17 that might overlap with his trial.

18 A trial start date of March 4, 2024, gives Mr. Trump
19 seven months between indictment and trial, which I believe
20 is sufficient time to advise with counsel and prepare his
21 defense. Indeed, I have considered all of the relevant
22 factors under the Speedy Trial Act, many of which I've already
23 discussed. This timeline does not move the case forward with
24 the haste of the mob. The trial will start three years, one
25 month, and 27 days after the events of January 6, 2021.

1 The trial involving the Boston Marathon bombing began less
2 than two years after the events. The trial involving Zacarias
3 Moussaoui for his role in the September 11 attacks was set to
4 begin one year after the attacks; but due to continuances,
5 appeals, and voluminous discovery, it began roughly four years
6 later.

7 My primary concern here, as it is in every case, is the
8 interest of justice, and that I balance the defendant's
9 right to adequately prepare with my responsibility to move
10 this case along in the normal order. Accordingly, trial will
11 commence on March 4, 2024, meaning jury selection will begin
12 then. I will issue an order with a schedule for pretrial
13 matters, including motions deadlines, status hearing, a
14 pretrial conference, and other interim deadlines.

15 If the parties have conflicts or other issues with the
16 schedule other than the trial date, you may file a motion to
17 alter those dates after consulting with opposing counsel
18 regarding alternative dates.

19 Do the parties have a proposed date for our next status
20 hearing? Ms. Gaston, Mr. Lauro?

21 MR. LAURO: I don't, Your Honor.

22 THE COURT: Ms. Gaston?

23 MS. GASTON: No, Your Honor.

24 MR. LAURO: Your Honor, I do need to put on the record.

25 THE COURT: Yes. Go ahead.

1 MR. LAURO: On behalf of President Trump, we will
2 certainly abide by Your Honor's ruling as we must, but we will
3 not be able to provide adequate representation to a client who
4 has been charged with serious offenses as a result of that
5 trial date. The trial date will deny President Trump the
6 opportunity to have effective assistance of counsel in light
7 of the enormity of this case.

8 I feel I need to put that on the record so there's no doubt
9 that in our judgment that trial date is inconsistent with
10 President Trump's right to due process and his right to
11 effective assistance of counsel under the Sixth Amendment.

12 THE COURT: I understand, and your objection is noted
13 for the record.

14 Does it make sense for us to have a status hearing -- to
15 set a date for a status hearing now, or why don't I issue a
16 minute order with a proposed pretrial schedule and then maybe
17 the parties can meet and confer and propose a status date. Is
18 that agreeable to you, Mr. Lauro?

19 MR. LAURO: I don't see any need for a status hearing.

20 THE COURT: All right. I'm sure we'll be back. Okay.
21 I'll issue a minute order with the pretrial schedule.

22 Ms. Gaston?

23 MS. GASTON: Your Honor, very briefly, one last matter.
24 In -- the government knows that in some cases in this district
25 attorneys have sent out polls to the general public in advance

1 of trial to gather material for change of venue motions. I
2 believe Mr. Lauro has suggested in interviews both that the
3 defense might file such a motion and that they might conduct
4 some polling.

5 THE COURT: By file such a motion, you mean a change of
6 venue motion?

7 MS. GASTON: Yes, Your Honor. Based on the wording of
8 the questions, the government has some concern about whether a
9 polling could affect the jury pool in the District, and so we
10 would just request that before either party does any such
11 polling, that the parties be allowed to brief the issue.

12 THE COURT: Mr. Lauro?

13 MR. LAURO: I'm not quite sure why that's necessary,
14 Your Honor, in light of fact that that is a core defense
15 function.

16 THE COURT: Well, here's the problem I see. The
17 District of Columbia is the site of the events at issue.
18 The citizens of the District of Columbia have a right -- an
19 interest in seeing that this matter is -- moves forward in a
20 fair manner.

21 I don't know whether you intend to file a motion to transfer
22 or what the grounds for such a motion to transfer would be, but
23 certainly based on statements that have been made outside of
24 this courtroom regarding the defense's view of the ability of
25 the citizens of the District of Columbia to provide a fair jury

1 pool, I'm watching carefully for any -- anything that might
2 affect that jury pool or poison that jury pool or in any way
3 affect the ability of the parties to select a fair jury in this
4 case.

5 So I guess I am concerned about what -- you know, if you file
6 a motion to transfer -- and you haven't, on one hand -- but are
7 doing polling on the other, that might affect the same jury pool
8 you're claiming is not fair, there's a problem. And so I can't
9 tell you what pretrial -- you know -- what investigation you can
10 do or what information you can gather, but I am concerned that,
11 in terms of gauging the views of the venire, of the jury pool,
12 you may actually affect their ability to render a fair verdict
13 by virtue of the kinds of questions you're asking, because
14 questions can be phrased in all kinds of ways.

15 That's what I'm concerned about. So I would ask -- well, are
16 you intending to conduct that kind of polling, first of all?

17 MR. LAURO: We intended to address this issue as we get
18 closer to trial, and now in terms of the expedited trial
19 schedule, we'll likely need to do it sooner rather than later.
20 Those motions are typically done with the assistance of some
21 sort of public assessment of views and positions among a jury
22 pool generally. I've never seen a court deny the opportunity
23 for defense counsel to do that in order to obtain a fair
24 trial.

25 THE COURT: I'm not planning to restrict your ability

1 to do that. But I do think it's fair to find out, for you to
2 let the Court know whether you're going to do that.

3 MR. LAURO: Well, perhaps we could submit something *in*
4 *camera* to Your Honor if that issue does come up. But I'm
5 certainly not going to share it with the United States
6 government in terms of what we're doing or the questions we're
7 asking. I don't think that would be appropriate.

8 THE COURT: I'm going to ask that if you intend to do
9 that kind of polling, that you notify the Court *ex parte*,
10 should you decide to do that, and then I'll consider it.
11 Ms. Gaston?

12 MS. GASTON: Yes, Your Honor. Our request was simply
13 that that polling not begin before we have an opportunity to
14 brief the issue.

15 THE COURT: Well, there may not be an issue to brief.
16 It's going to be -- if there's a motion to change venue and
17 polling, those two things may be interconnected. So let's not
18 get ahead of ourselves and find more motions and more briefing
19 that we need to do. But I'll ask Mr. Lauro to notify the
20 Court, and it can be done *ex parte*, if and when the defense
21 decides to undertake such activities.

22 MS. GASTON: Thank you, Your Honor.

23 THE COURT: All right. Thank you all.

24 (Proceedings adjourned at 11:32 a.m.)
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CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify
that the foregoing pages are a correct transcript from the
record of proceedings in the above-entitled matter.

/s/ Bryan A. Wayne
Bryan A. Wayne